

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE J. KONCELIK, JR.,)	
)	
Plaintiff,)	Civil Action No. 08-C-623
)	
v.)	Judge: Bucklo
)	Magistrate Judge: Nolan
SUNBEAM PRODUCTS, INC.)	
d/b/a JARDEN CONSUMER)	
SOLUTIONS)	
)	
Defendant.)	

**JOINT MOTION TO EXTEND CLAIM CONSTRUCTION
DEADLINES IN SCHEDULING ORDER**

COME NOW the parties, by and through their respective undersigned counsel, and jointly move this Court for an Order extending certain of the dates in the Court's Scheduling Order of May 13, 2008, in the above-captioned matter. In particular, the parties seek to extend the deadlines set by the Court for claim construction-related submissions and the Markman hearing, in that Defendant Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions ("Sunbeam") has filed a Request for Inter Partes Reexamination of U.S. Patent No. 7,096,7767 (the "776 Patent" or "patent-in-suit") with the United States Patent and Trademark Office ("PTO"), and the PTO is scheduled to elect whether to accept or reject Sunbeam's re-examination petition on or before September 27, 2008. In support of this joint motion, the parties state as follows:

1. On or about May 13, 2008, the Court entered its Scheduling Order in the above-captioned cause, setting forth certain deadlines to further guide the handling of this matter, including the following dates:

EVENT	DATE
Parties shall exchange preliminary claim construction by	August 11, 2008
Joint claim construction of pre-hearing statement due	August 18, 2008
Opening claim construction briefs due	August 25, 2008
Responsive claim construction briefs due	September 8, 2008
Markman hearing, if necessary	October 6, 2008 at 10:00 a.m.

2. On or about June 27, 2008, Sunbeam filed a Request for Reexamination of the patent-in-suit with the PTO. Sunbeam's petition seeks an Inter Partes Reexamination pursuant to 35 U.S.C. § 311-318 and 37 C.F.R. 1.902–1.997. In its Request for Reexamination, Sunbeam contends that each and every claim of the patent-in-suit are unpatentable as a result of contained cited prior art.

3. Under the PTO's reexamination guidelines, it must elect whether to accept or reject a Request to Reexamine a patent within 90 days of the date that the Request to Reexamine is docketed. See Manual of Patent Examination Procedures, § 2641; 35 U.S.C. § 312(a); 37 C.F.R. 1.923. Sunbeam's Request for Inter Partes Reexamination of the '776 Patent was docketed by the PTO on June 27, 2008. Accordingly, under the PTO's own guidelines, it is required to accept or reject the petition to reexamine the patent-in-suit no later than **September 27, 2008**.

4. Accordingly, the parties seek an extension of the claim construction-related deadlines, noted above in paragraph 1, to be extended sixty (60) days, to allow the PTO to evaluate and make its determination as to whether to accept Sunbeam's Request for Reexamination of the patent-in-suit.

5. Sunbeam has advised Plaintiff through counsel that, should the PTO accept Sunbeam's Request for Inter Partes Reexamination of the patent-in-suit, Sunbeam will ask this Court to stay this civil action pending resolution of the reexamination proceedings.

6. The parties proposed dates for the claim construction-related deadlines are as follows:

EVENT	DATE
Parties shall exchange preliminary claim construction by	October 11, 2008
Joint claim construction of pre-hearing statement due	October 18, 2008
Opening claim construction briefs due	October 25, 2008
Responsive claim construction briefs due	November 8, 2008
Markman hearing, if necessary	December 6, 2008 at 10:00 a.m. or at the Court's convenience

7. This motion is directed only to claim construction-related deadlines. No other dates within the Court's May 13, 2008, Scheduling Order will be effected.

8. This motion is not intended for the purposes of delay, but rather to preserve attorney and judicial resources and to allow the PTO sufficient time to determine whether it will accept or reject Sunbeam's Request to Reexamine the '776 Patent.

WHEREFORE, the parties jointly seek an extension of 60 days on all claim construction-related deadlines set forth in the Court's May 24, 2008, Scheduling Order, and for such other and further relief as the Court deems just and proper.

Dated: July 28, 2008

<u>/s/ Christopher E. Haigh</u> Christopher E. Haigh Illinois Bar No. 22038-49 THE LAW OFFICE OF CHRISTOPHER HAIGH 2038 N. Clark, #105 Chicago, Illinois 60614 Telephone: (312) 242-1685 Facsimile: (312) 277-9007 Geoffrey A. Baker Illinois Bar No. 6236658 DOWELL BAKER, P.C. 229 Randolph St. Oak Park, IL 60302 Telephone: (708) 660-1413 Facsimile: (312) 873-4466 Attorney for Plaintiff Lawrence J. Koncelik, Jr.	<u>/s/ Michael R. Annis</u> Michael R. Annis Illinois Bar No. 6238967 Gary A. Pierson, II Illinois Bar No. 6270434 HUSCH BLACKWELL SANDERS LLP 720 Olive St., 24 th Floor St. Louis, Missouri 63101 Telephone: (314) 345-6000 Facsimile: (314) 345-6060 Attorneys for Defendant Sunbeam Products, Inc.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 28th day of July, 2008, the foregoing was served by operation of the Court's electronic filing system.

/s/ Michael R. Annis